

STATE OF MICHIGAN
COURT OF APPEALS

WHITESELL INTERNATIONAL
CORPORATION,

Plaintiff-Counterdefendant-
Appellant,

v

WILLIAM WHITAKER,

Defendant-Counterplaintiff-
Appellee,

and

MRC INDUSTRIAL GROUP, INC.,

Defendant,

and

PIERCETEK, INC.,

Defendant/Counter-Plaintiff.

UNPUBLISHED
January 18, 2011

No. 287569
Wayne Circuit Court
LC No. 05-518716-CZ

ON RECONSIDERATION

Before: MURPHY, C.J., and JANSEN and ZAHRA, JJ.

MURPHY, C.J. (*dissenting in part and concurring in part*).

On the basis of the reasoning and analysis set forth in my original dissenting opinion, which I adopt and incorporate by reference for purposes of this opinion on reconsideration, I continue to find that the doctrines of res judicata and collateral estoppel are inapplicable and that the trial court erred in summarily dismissing the complaint filed by Whitesell International Corporation (WIC). For purposes of res judicata, it is simply impossible to conclude that WIC could have brought a claim or cause of action in the two earlier suits pertaining to defendant-counterplaintiff William Whitaker's use and disclosure of the Stamptech Process relative to his

association with defendants MRC Industrial Group, Inc., and Piercetec, Inc., given that said use and disclosure had not yet transpired when those previous suits were litigated and closed. Further, for purposes of collateral estoppel, the issues concerning the enforceability of the confidentiality agreement and assignment and whether the Stamptech Process constituted a trade secret that had been assigned were not tried, conceded, or determined; therefore, collateral estoppel cannot be invoked to dismiss WIC's action against Whitaker. Accordingly, I continue to respectfully dissent as to the dismissal of WIC's lawsuit.

In my original dissenting opinion, and in regard to Whitaker's counterclaim, I concluded that the trial court prejudicially erred in directing a verdict on the issue of whether the Stamptech Process constituted a "trade secret." My colleagues, on reconsideration, have now adopted this view, and I concur with their conclusion and analysis and would add, as further support, the reasoning set forth in my earlier opinion, which I adopt and incorporate here by reference.

I respectfully dissent in part and concur in part.

/s/ William B. Murphy